

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRANDON R. JOHNSON,
Plaintiff,
v.
WARDEN, *et al.*,
Defendants.

Case No. 2:23-cv-00908-JDP (PC)

ORDER

DENYING PLAINTIFF'S MOTION TO
AMEND AND MOTION FOR EXTENSION
OF TIME AS UNNECESSARY

ECF Nos. 16 & 19

SCREENING ORDER THAT THE FIRST
AMENDED COMPLAINT STATES
COGNIZABLE FOURTH AMENDMENT
EXCESSIVE FORCE AND BATTERY
CLAIMS AGAINST DEFENDANT
FRENCH AND FALSE ARREST CLAIMS
AGAINST DEFENDANTS FRENCH,
LUCA, AND REIMCHE

FINDINGS AND RECOMMENDATIONS

THAT ALL OTHER CLAIMS BE
DISMISSED AS NON-COGNIZABLE

ECF No. 17

OBJECTIONS DUE WITHIN FOURTEEN
DAYS

Plaintiff, a prisoner in Avenal State Prison, alleges that defendants, all of whom are employed by the El Dorado County Sheriff's office, violated his rights during an arrest in July 2021 by using excessive force against him, falsely imprisoning him, and, afterward, failing to

1 safeguard his due process rights. ECF No. 17 at 9-16. After reviewing the complaint, I find that
 2 it states a viable Fourth Amendment excessive force and battery claim against defendant French.
 3 It also states cognizable false arrest claims against French, Luca, and Reimche. I will direct
 4 service for that defendant. All other claims and defendants should be dismissed. Plaintiff's
 5 motion to amend, ECF No. 16, and motion for extension of time, ECF No. 19, are denied as
 6 unnecessary. Plaintiff was offered an opportunity to amend in my last screening order, ECF
 7 No. 13, and no motion to amend is necessary. Additionally, there are no pending deadlines that
 8 necessitate a motion for extension of time.

9 **Screening Order**

10 **I. Screening and Pleading Requirements**

11 A federal court must screen a prisoner's complaint that seeks relief against a governmental
 12 entity, officer, or employee. *See* 28 U.S.C. § 1915A(a). The court must identify any cognizable
 13 claims and dismiss any portion of the complaint that is frivolous or malicious, fails to state a
 14 claim upon which relief may be granted, or seeks monetary relief from a defendant who is
 15 immune from such relief. *See* 28 U.S.C. §§ 1915A(b)(1), (2).

16 A complaint must contain a short and plain statement that plaintiff is entitled to relief,
 17 Fed. R. Civ. P. 8(a)(2), and provide "enough facts to state a claim to relief that is plausible on its
 18 face," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not
 19 require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S.
 20 662, 678 (2009). If the allegations "do not permit the court to infer more than the mere
 21 possibility of misconduct," the complaint states no claim. *Id.* at 679. The complaint need not
 22 identify "a precise legal theory." *Kobold v. Good Samaritan Reg'l Med. Ctr.*, 832 F.3d 1024,
 23 1038 (9th Cir. 2016). Instead, what plaintiff must state is a "claim"—a set of "allegations that
 24 give rise to an enforceable right to relief." *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264
 25 n.2 (9th Cir. 2006) (en banc) (citations omitted).

26 The court must construe a pro se litigant's complaint liberally. *See Haines v. Kerner*, 404
 27 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant's complaint "if it
 28 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which

1 would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017).
 2 However, ““a liberal interpretation of a civil rights complaint may not supply essential elements
 3 of the claim that were not initially pled.”” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251,
 4 1257 (9th Cir. 1997) (*quoting Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

5 **II. Analysis**

6 Plaintiff alleges that, on July 4, 2021, he was returning to his car after exiting a grocery
 7 door. ECF No. 17 at 9. A man approached him and alleged that plaintiff’s car belonged to him.
 8 *Id.* The two men had an altercation and defendant French responded to the scene. *Id.* Plaintiff
 9 alleges that French used unnecessary force to subdue him by tasing him and then beating and
 10 stomping on him. *Id.* These allegations are sufficient to state a Fourth Amendment claim against
 11 French. The Eighth and Fourteenth Amendments do not apply because plaintiff was neither a
 12 pretrial detainee nor a prisoner at the time; the Fourth Amendment governs excessive force claims
 13 related to an arrest. *See Hughes v. Rodriguez*, 31 F.4th 1211, 1220 (9th Cir. 2022). These
 14 allegations also state a cognizable battery claim against French.

15 As to defendants Reimche and Luca, he alleges that, after French used excessive force in
 16 subduing him, they arrived and forcefully handcuffed him. ECF No. 17 at 10. A “forceful
 17 handcuffing” is insufficient to state an excessive force claim. *See Graham v. Connor*, 490 U.S.
 18 386, 396 (1989) (“Not every push or shove, even if it may later seem unnecessary in the peace of
 19 a judge’s chambers, violates the Fourth Amendment.”) (internal quotation marks and citations
 20 omitted). And there is no viable claim for delayed medical care against Reimche or Luca. They
 21 allegedly arrived at the scene at 12:43 p.m. and, by 1:07 p.m., plaintiff was being transported to
 22 the hospital. ECF No. 17 at 10. These allegations are sufficient, however, to state cognizable
 23 false arrest claims against French, Luca, and Reimche.

24 Plaintiff’s other claims should be dismissed. Plaintiff alleges that defendants Leikauf, the
 25 El Dorado Sheriff, and El Dorado County itself are culpable because they failed to adequately
 26 train their deputies. *Id.* at 12. He has failed to allege any specific deficiencies in training or
 27 explain how he knows that French’s actions were caused by such an omission, however. To the
 28 contrary, if his allegations about the severity of the force used by French are accepted as true,

1 even a complete layman would conclude that the force was excessive. Not every bad act by a law
2 enforcement officer necessarily implicates a failure to train.

3 Plaintiff also claims that defendants French, Reimche, Luca, and Brown violated his due
4 process rights by covering up the use of force incident. *Id.* at 15. He claims that defendant
5 Brown approved these reports. *Id.* The due process clause contains no right to be free from false
6 allegations; it guarantees only certain procedural protections in defending against those
7 allegations. *See Ponce v. AMTRAK R.R. Co.*, No. 1:21-cv-01200-JLT-BAM, 2022 U.S. Dist.
8 LEXIS 96676, *10 (E.D. Cal. May, 27, 2022) (“To the extent that he is seeking state a federal
9 claim on the submission of false police reports, the Due Process Clause itself does not contain any
10 language that grants a broad right to be free from false accusations, but guarantees certain
11 procedural protections to defend against false accusations.”).

12 Given that plaintiff has already been afforded an opportunity to amend, I will direct
13 service for his cognizable claims and recommend that his non-viable ones be dismissed.

14 Accordingly, it is ORDERED that:

15 1. Plaintiff’s motion to amend, ECF No. 16, and motion for extension of time, ECF No.
16 19, are DENIED as unnecessary.

17 2. This action shall proceed based on the Fourth Amendment excessive force and state
18 law battery claims against defendant French and state law false imprisonment claims against
19 defendants French, Reimche, and Luca.

20 3. The Clerk of Court shall send plaintiff three USM-285 forms, a summons, a Notice of
21 Submission of Documents form, an instruction sheet, and a copy of the complaint filed November
22 7, 2023, ECF No. 17.

23 4. Within thirty days from the date of this order, plaintiff shall complete the attached
24 Notice of Submission of Documents and submit the completed Notice to the court with the
25 following documents:

- 26 a. one completed summons for the defendants;
- 27 b. three completed USM-285 form; and
- 28 c. four copies of the signed November 7, 2023 complaint.

1 5. Plaintiff need not attempt service on defendants and need not request waiver of service.
2 Upon receipt of the above-described documents, the court will direct the U.S. Marshals Service to
3 serve the above defendants pursuant to Federal Rule of Civil Procedure 4, without payment of
4 costs by plaintiff.

5 6. The failure to comply with this order may result in the dismissal of this action.

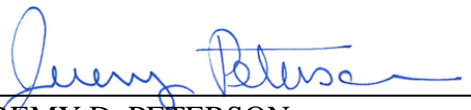
6 7. The Clerk of Court shall randomly assign a district judge to this action.

7 Further, it is RECOMMENDED that all claims other than the ones identified as viable
8 above be DISMISSED for failure to state a claim.

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
11 after being served with these findings and recommendations, any party may file written
12 objections with the court and serve a copy on all parties. Such a document should be captioned
13 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
14 objections shall be served and filed within fourteen days after service of the objections. The
15 parties are advised that failure to file objections within the specified time may waive the right to
16 appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*
17 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

18
19 IT IS SO ORDERED.

20 Dated: January 16, 2024


JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE

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NOTICE OF SUBMISSION OF
DOCUMENTS

In accordance with the court's Screening Order, plaintiff must submit:

<u>1</u>	completed summons form
<u>3</u>	completed forms USM-285
<u>4</u>	copies of the November 7, 2023 complaint

Plaintiff

Dated: